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 DELBERT GENE DUTTON,  
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 Claimant,  
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 v.  
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 STATE OF IDAHO, INDUSTRIAL  
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 SPECIAL INDEMNITY FUND,  
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 Defendant.  
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**IC 2002-519782**  
  
**FINDINGS OF FACTS,**  
**CONCLUSIONS OF LAW, AND ORDER**

Filed March 3, 2008

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Idaho Falls, Idaho, on August 22, 2007. Delwin W. Roberts of Idaho Falls represented Claimant. Anthony M. Valdez of Twin Falls represented Defendant. The parties submitted oral and documentary evidence and filed post-hearing briefs. The matter came under advisement on December 5, 2007, and is now ready for decision.

By stipulation of the parties, the issues to be decided are:

- ## FINDINGS, CONCLUSIONS, AND ORDER - 1

3. Whether the State of Idaho, Industrial Special Indemnity Fund (ISIF) is liable under Idaho Code § 72-332; and

4. Apportionment under the *Carey* formula.

### **BACKGROUND AND CONTENTIONS OF THE PARTIES**

It is undisputed that Claimant sustained an occupational injury on September 27, 2002, resulting in permanent impairment and that Claimant suffered multiple prior injuries, both occupational and non-occupational, which resulted in significant permanent impairment. Claimant's time-of-injury Employer and its Surety entered into a settlement agreement with Claimant prior to hearing, leaving ISIF as the sole Defendant in this proceeding.

Claimant asserts that his combined multiple impairments, together with pertinent non-medical factors, result in 100% disability. Alternatively, Claimant asserts that he is entitled to permanent total disability pursuant to the odd lot doctrine.

Defendant contends that Claimant has not met his burden of proof to establish permanent total disability or odd-lot status, and that he has transferable skills and work experience which make him employable in spite of his significant impairment.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, Shauna Dutton, Richard G. Taylor, Ph.D., and Kari Rohrbach, offered at hearing;
2. Claimant's Exhibits 1 through 2;
3. Defendant's Exhibits A through J; and
4. The Industrial Commission legal file.

After having considered all the above evidence, the briefs of the parties and the Recommendation of the Referee, the Commission hereby issues the following findings of fact, conclusions of law, and order.

## **FINDINGS OF FACT**

### ***CLAIMANT'S BACKGROUND***

1. Claimant was born August 26, 1965, and was forty-two years of age at the time of hearing. He resides two miles southwest of Ashton, Idaho, which has a population of approximately 1,500. The next closest town is St. Anthony, which is 14 miles away, with a population of 3,000. Rexburg is 35 miles from Ashton and has a population of 17,000.

### ***Education/Vocational Skills***

2. Claimant graduated from high school in Whitesboro, Texas, in 1983 and has intermittently taken and completed college courses, earning forty-two credit hours in general education. He has had basic first aid and crisis intervention training associated with his employment as a youth attendant. Claimant has never had formal computer training and does not know how to send or receive e-mail. He testified that he is unable to use a keyboard with his right hand, and described his typing skills as "chicken pecking."

### ***Motorcycle Accident***

3. On May 25, 1983, two days before his high school graduation, Claimant was seriously injured in a motorcycle accident. He sustained multiple fractures to his right leg, which resulted in eventual amputation above the right knee. His right hip was injured. His right wrist was nearly severed, and he sustained a severe fracture of his right femur. His right upper extremity injuries resulted in nerve damage throughout the extremity, significantly limiting its use. Claimant uses a prosthetic right leg, which has been repaired or replaced on multiple

## **FINDINGS, CONCLUSIONS, AND ORDER - 3**

occasions.

4. Craig B. Lords, D.C., evaluated Claimant on May 9, 2007, and assigned a permanent impairment rating for the May 25, 1983, injury in accordance with the *AMA Guides to the Evaluation of Permanent Impairment*, 5<sup>th</sup> ed. (*AMA Guides*). Dr. Lords calculated 24% permanent partial impairment (PPI) of the right upper extremity, 12% PPI of the right hip, and 40% PPI for the above knee amputation of the right lower extremity. Using the combined values chart in the *AMA Guides*, Dr. Lords assigned 60% whole person impairment for injuries sustained in the motorcycle accident of May 1983, which rating was undisputed.

### ***Employment***

5. Claimant's employment since high school has primarily involved supervising troubled youth. He initially worked for Vision Quest, an organization that teaches life lessons and coping skills to adolescents while traveling by wagon train. Claimant enjoyed the work, but found it physically difficult and incompatible with his prosthesis needs. He terminated his employment mid-trip, at which time he was traveling through Idaho.

6. Claimant decided to remain in Idaho and found work with the Idaho Youth Ranch as an attendant for juveniles with behavioral issues. His job duties were similar to those of a house parent and involved the day-to-day supervision of youth in a residential treatment setting. After two years, Claimant relocated to Oklahoma for family reasons, where he performed similar work at Boys Ranch Town for approximately one year.

7. Upon his return to Idaho in 1994, Claimant obtained employment with the Idaho Department of Health and Welfare at its St. Anthony youth facility.<sup>1</sup> His job title was therapy/rehabilitation technician and his job duties were essentially the same as his prior work

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<sup>1</sup> Authority for the juvenile facility in St. Anthony was subsequently transferred to the Idaho Department of Juvenile Corrections.

and entailed supervision of troubled youth in a residential setting. Claimant remained in this position until his injury of September 27, 2002.

8. At the time of his last injury, Claimant was earning \$14.76 per hour. Prior to the injury, his Employer accommodated his limitations associated with his right leg amputation and his right upper extremity dysfunction. At times, Claimant was required to perform physical restraints of residents, which he was able to accomplish, with difficulty; he sought assistance from co-workers whenever possible when required to restrain residents.

9. Before embarking on his work as a youth attendant, Claimant held short-term jobs as a pot washer, fast-food counter clerk, and assembler.

#### ***PRIOR INDUSTRIAL INJURIES***

10. Claimant's instability associated with his prosthetic leg resulted in multiple falls while in the course of employment. Additional work-related injuries resulted from physical restraints of juveniles. Claimant sustained at least nine industrial injuries prior to the injury of September 27, 2002. The majority of these were minor and did not result in permanent impairment. Some of the claims were limited to damage to Claimant's prosthesis.

#### ***Left Foot***

11. On March 18, 1995, Claimant sustained an injury to his left foot, ankle, and knee when he stepped on a dirt mound in a parking lot, twisted his left foot, and fell. Claimant was diagnosed with a displaced fifth metatarsal fracture. An open reduction and internal fixation with hardware placement was performed on March 22, 1995. Claimant was assigned 3% whole person PPI attributable to the left foot injury, which impairment rating is undisputed.

#### ***Left Knee***

12. Claimant's left knee symptoms began with the injury of March 18, 1995, and

were aggravated while performing physical restraints on August 10, 1997, April 5, 2000, and October 30, 2001. An arthroscopic medial meniscus repair was performed on November 19, 1997. An arthroscopic plica excision with chondromalacia debridement was done on December 1, 1998. Grade II-III degenerative changes were noted during the latter surgery. Claimant was assigned 4% whole person PPI attributable to his left knee injury of 1997, which impairment rating is undisputed.

### ***Spine***

13. Claimant injured his thoracic spine during the April 5, 2000 accident, and injured his lumbar spine when he slipped on ice on February 2, 2002. Diagnostic studies did not reveal patent pathology from either injury. However, Claimant's thoracic complaints persisted following a course of conservative treatment. Claimant's T-spine symptoms are aggravated by his altered gait, his use of crutches associated with his prosthetic leg, and multiple left knee injuries. Although a medical panel determined that Claimant did not have permanent impairment associated with his injury of April 5, 2000, he has received ongoing treatment for chronic thoracic complaints since December 2000, and continues to take narcotic medication for thoracic pain.

14. Claimant had undisputed impairments totaling 67% whole person prior to the September 2002 injury. This figure is calculated by combining Claimant's pre-existing impairment ratings (60% motorcycle accident of May 1983, 3% left foot injury of March 1995, and 4% multiple left knee injuries.)

### ***THE LAST ACCIDENT AND SUBSEQUENT MEDICAL CARE***

15. On September 27, 2002, Claimant was working with residents in a temporary building while their cottage was undergoing renovation. Claimant exited the bathroom and

slipped on clothing that had been left on the floor by a resident. Claimant fell onto his left knee and twisted his prosthetic leg. He experienced pain to his neck, back, left knee, and left arm.

16. Claimant initially sought medical treatment on October 2, 2002, with Lonnie E. Paulos, M.D., who had treated Claimant's previous knee injuries. Dr. Paulos ordered diagnostic studies of the left knee and performed conservative treatment in the form of Synvisc injections, anti-inflammatory medication, and a course of home physical therapy. Claimant's symptoms persisted, and Dr. Paulos recommended arthroscopic surgery.

17. On May 13, 2003, Claimant underwent a left knee arthroscopy, debridement of the trochlea, and harvest of autologous chondrocytes at the direction of Dr. Paulos. Claimant's left knee pain continued, so Dr. Paulos referred him to Michael J. Curtin, M.D., for a second opinion.

18. Dr. Curtin evaluated Claimant on June 12, 2003, and diagnosed symptoms consistent with full thickness chondral defect, as documented arthroscopically. He determined that conservative treatment had been exhausted and recommended autologous cartilaginous transplantation, also referred to as a Carticel procedure.

19. Claimant underwent a Carticel procedure on August 19, 2003, at the direction of Dr. Paulos. Post-surgical physical therapy resulted in slight improvement in the range of motion of Claimant's left knee.

20. Dr. Paulos found Claimant to be at maximum medical improvement (MMI) on February 27, 2004, and assigned a 10% whole person PPI rating for osteoarthritis of the left knee. The 10% PPI rating is in addition to the previous left knee rating of 4% because the previous left knee rating was not based on osteoarthritis. Although Dr. Paulos felt that Claimant's condition was stable, he indicated that a future arthroscopic surgery would likely be

## **FINDINGS, CONCLUSIONS, AND ORDER - 7**

required.

21. On June 1, 2004, Dr. Paulos performed a left knee arthroscopy with removal of loose body. As of June 30, 2004, Claimant demonstrated improvement with regard to loose body sensations, but continued to have significant anterior knee pain.

***POST-INJURY RESTRICTIONS AND EMPLOYMENT ATTEMPTS***

22. Dr. Paulos released Claimant to sedentary work on March 1, 2004, for a desk-type job. He provided permanent restrictions of no heavy lifting, no twisting, turning, squatting, kneeling, crawling, climbing, or stooping and no prolonged standing/walking.

23. Dr. Lords completed a functional capacity evaluation form on May 16, 2007, based on his May 9, 2007 examination of Claimant, and a review of the medical records. Dr. Lords opined that Claimant is capable of light work for a maximum of four hours per day. He can lift up to 10 pounds frequently, and up to 20 pounds occasionally. Dr. Lords recommended that Claimant avoid climbing, balancing, stooping, kneeling, crouching, crawling, and walking. Claimant cannot sit or stand for more than one hour at a time and needs to be able to recline for one hour out of his four-hour workday.

24. Claimant has mobility deficits and transportation difficulty associated with his physical impairment. Claimant is restricted from walking. He has a wheelchair, but it is not motorized and Claimant is not able to propel himself because of strength and range-of-motion deficits of his right arm. Claimant is physically able to drive short distances occasionally, but unable to consistently drive more than a few miles.

25. Claimant's use of narcotic pain medication, primarily OxyContin, further limits his ability to drive. Medication use also interferes with Claimant's concentration and contributes

to fatigue. Claimant's fatigue, together with difficulty sleeping due to pain, results in Claimant's need to take multiple naps during the day.

26. Claimant has not returned to work since his injury. He spoke with Employer about a sedentary position, but no such positions were available. He inquired about a job as a motel desk clerk and learned that he would be required to be on his feet for extended periods of time and engage in other activities that exceed his restrictions. Claimant inquired about a greeter position at Wal-Mart, but learned the position required a significant amount of standing and was generally filled by current employees with temporary restrictions.

### ***EXPERT VOCATIONAL OPINIONS***

***Nancy J. Collins, Ph.D.***

27. Defendant retained Dr. Collins as a vocational rehabilitation expert. She was directed to assess Claimant and render an opinion as to his current employability and future vocational disability based on his pre-existing medical condition and his injury of September 27, 2002. Dr. Collins reviewed medical records, vocational records, and other records relating to Claimant's condition, and interviewed Claimant on May 9, 2007.

28. Dr. Collins determined that Claimant's work history included semi-skilled to skilled employment. She opined that his work experience elevated him to a skilled worker category in spite of his lack of a college degree. She concluded that Claimant was not limited in his ability to acquire new skills, but also noted his concern that he lacked the concentration and physical stamina to return to school. Dr. Collins found that Claimant was computer literate but had difficulty keyboarding.

29. Dr. Collins utilized *LifeStep Profiler* software as an assessment tool to evaluate Claimant's employability. The software identifies transferable skills and estimates labor market

### **FINDINGS, CONCLUSIONS, AND ORDER - 9**

access adjusted for physical restrictions. Dr. Collins found that prior to the September 2002 injury, Claimant had transferable skills for fourteen job titles in the national labor market. Based on his restrictions after the injury, Claimant has transferable skills for three job titles. This represents a 78.5% loss of access to the labor market as a result of his combination of restrictions.

30. Labor market research in the Rexburg, Idaho Falls, and Ashton areas identified various clerk and customer service positions for which Claimant would qualify without additional training, and jobs involving counseling or computer training for which Claimant would qualify with additional training or education. Wages without a college degree ranged from \$6.61 to \$13.00 per hour and increased to \$15.00 to \$18.00 per hour with a college degree.

***Richard G. Taylor, Ph.D.***

31. Claimant retained Dr. Taylor as a vocational rehabilitation expert to evaluate his ability to perform work and earn wages. Dr. Taylor has a bachelor of science degree in psychology, a master's degree in rehabilitation counseling and a doctoral degree in counseling with an emphasis in vocational rehabilitation. He is currently employed by Brigham Young University-Idaho (BYU-Idaho) as Director of Services for Students with Disabilities. His University duties include coordinating accommodations for students with disabilities so they can attend classes.

32. Dr. Taylor reviewed medical records, administered standardized tests, and interviewed Claimant. The testing revealed that Claimant was of average intelligence, with average achievement in word recognition and arithmetic. He utilized a computer analysis of occupational titles based on data from the United States Department of Labor and considered the State of Idaho as Claimant's labor market.

33. Dr. Taylor opined that Claimant sustained a 98% loss of labor market access following his September 2002 injury. He explained that this loss was tantamount to a complete loss of labor market access because his calculation did not consider either Claimant's physical restrictions or his obvious physical disability. Additionally, because Dr. Taylor included the entire state instead of the limited labor market that actually exists near Claimant's rural residence, Claimant's actual loss of labor market access likely exceeds 98%.

34. Dr. Taylor reviewed Dr. Collins' report and expressed disagreement with her conclusions. Dr. Taylor places Claimant's past work experience in a lower skill category than Dr. Collins. Dr. Collins' analysis resulted in identification of potential jobs for which Claimant lacks the requisite skills or education. Dr. Taylor further asserts that Dr. Collins identified jobs which exceed Claimant's physical restrictions, and that there was no evidence demonstrating the extent to which identified types of jobs were actually available in the current economy.

35. Upon questioning from the Referee, Dr. Taylor acknowledged that there was opportunity for educational advancement through BYU-Idaho in Rexburg, but that accommodative services did not include transportation from Ashton to Rexburg and he was unaware of public transportation available to or from Ashton. He indicated that Claimant's need to recline for intermittent naps would not be something that his institution could accommodate.

***Kari Rohrbach***

36. Ms. Rohrbach is the Industrial Commission Rehabilitation Division (ICRD) consultant who handled Claimant's case. She opened her file on October 30, 2002. She performed a job site evaluation with the Department of Juvenile Corrections and conducted an interview with Claimant in November 2002. Employer confirmed that modified duty employment compatible with Claimant's restrictions was not available.

37. Ms. Rohrbach was in intermittent contact with Claimant until she closed his file in January 2004 because he continued to receive medical treatment and was not medically stable. Claimant told Ms. Rohrbach that he was receiving full retirement benefits from Employer and was not able to return to work, nor was he in need of long range return-to-work planning.

38. Ms. Rohrbach performed labor market research and identified potential jobs that Claimant could perform from a wheelchair. She felt that Claimant's past employment represented a range from semi-skilled to skilled employment. The issue of computer literacy was not addressed during her interactions with Claimant. Ms. Rohrbach acknowledged that none of the jobs she identified would be good options if Claimant lacked basic computer skills.

## **DISCUSSION AND FURTHER FINDINGS**

### ***Total Permanent Disability***

39. Claimant asserts that he is totally and permanently disabled following the September 2002 accident using either of the two methodologies available to establish total permanent disability:

First, a claimant may prove a total and permanent disability if his or her medical impairment together with the nonmedical factors total 100%. If the Commission finds that a claimant has met his or her burden of proving 100% disability via the claimant's medical impairment and pertinent nonmedical factors, there is no need for the Commission to continue. The total and permanent disability has been established at that stage. *See Hegel v. Kuhlman Bros., Inc.*, 115 Idaho 855, 857, 771 P.2d 519, 521 (1989) (Bakes, J., specially concurring) ("Once 100% disability is found by the Commission on the merits of a claimant's case, claimant has proved his entitlement to 100% disability benefits, and there is no need to employ the burden-shifting odd lot doctrine").

*Boley v. State, Indus. Special Indem. Fund*, 130 Idaho, at 281, 939 P.2d at 857 (emphasis added).

When a claimant cannot make the showing required for 100% disability, then a second methodology is available:

The odd-lot category is for those workers who are so injured that they can perform no services other than those that are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.

*Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 584 38 P.3d 617, 622 (2001), citing *Lyons v. Industrial Special Indem. Fund*, 98 Idaho 403, 565 P.2d 1360 (1977). The worker need not be physically unable to perform any work:

They are simply not regularly employable in any well-known branch of the labor market absent a business boom, the sympathy of a particular employer or friends, temporary good luck, or a superhuman effort on their part.

*Id.*, 136 Idaho at 584, 38 P.3d at 622.

40. Claimant does not perceive himself as totally disabled, and has demonstrated the ability in the past to maintain employment in spite of significant physical limitations. The Claimant's age, intelligence and college credit hours are an indication that Claimant may eventually be a good candidate for retraining.

41. Claimant has an aptitude for working with troubled youth and an optimal career path would likely involve obtaining a college degree and finding sedentary employment in the area of counseling. It is possible that Claimant could pursue this path with management of pain medication in a manner that would allow periods of lucidity sufficient to concentrate on educational endeavors, appropriate accommodation for classroom access (or an on-line distance program with voice recognition software and sufficient training), financial aid, transportation assistance, and a supportive environment. The fact that there is potential for retraining is different than having a realistic retraining program in place. The possibility of Claimant being successfully retrained is merely speculative. Further, the fact that Claimant may eventually become *qualified* for employment falls short of establishing that there are employers who would

be in a position to accommodate the flexibility that Claimant's condition requires.<sup>2</sup>

42. As discussed in finding of fact 14, Claimant's pre-existing whole person impairment is 67%. Claimant's impairment for the injury of September 27, 2002, as determined by Dr. Paulos is 10%. Dr. Taylor calculates Claimant's loss of job market access as 98% whereas Dr. Collins calculates loss of job market access to be 78.5%.

Claimant's 77% physical impairment, combined with his 78.5% to 98% loss of access to the job market, are together more than sufficient to establish that Claimant is 100% disabled. His mobility deficits and pharmacological issues, while substantial, pale in comparison and provide an additional accumulation of factors to arrive at total disability.

### ***Odd Lot Determination***

43. Because the Commission finds that Claimant's impairment, together with other pertinent non-medical factors, results in 100% disability, it is not necessary to analyze or discuss whether Claimant is totally and permanently disabled pursuant to the odd lot doctrine.

### ***ISIF LIABILITY***

44. A party seeking to establish liability against the ISIF pursuant to Idaho Code § 72-332 carries the burden of proof. *Garcia v. J.R. Simplot Co.*, 115 Idaho 966, 772 P.2d 173 (1989) *overruled on other grounds by Archer v. Bonners Ferry Datsun*, 117 Idaho 166, 786 P.2d 557 (1990); *Boley v. State, Indus. Special Indem. Fund*, 130 Idaho 278, 939 P.2d 854 (1997). ISIF liability is triggered only upon a finding of total permanent disability of the claimant. Once an injured worker establishes total permanent disability, he or she must prove four additional

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<sup>2</sup> See, *Anderson v. Harper's, Inc.*, 143 Idaho 193, 199, 141 P.3d 1062, 1068 (2006), which found that the Commission's decision that Claimant was totally and permanently disabled was not clearly erroneous where Claimant could be retrained or employed only in the event that a number of conditions, including changes in medical management, access, and accommodations, were to change.

conditions to establish ISIF liability under the statute.

1. That there was a preexisting impairment;
2. That the impairment was manifest;
3. That the impairment was a subjective hindrance; and
4. That the impairment combines in some way, causing total permanent disability.

*Dumaw v. J. L. Norton Logging*, 118 Idaho 150, 155, 795 P.2d 312, 317 (1990).

45. Based on the finding that Claimant is 100% disabled, Idaho Code § 72-332 analysis is necessary. In the present case, Defendant's primary contention was that Claimant failed to prove that he is totally and permanently disabled. They do not dispute that Claimant had manifest impairment, which was a subjective hindrance that pre-existed the September 2002 injury, and that his current level of disability, whether total or less than total, is a result of his pre-existing impairment combined with impairment attributable to the September 2002 injury. Therefore, ISIF is liable under Idaho Code § 72-332.

#### ***CAREY APPORTIONMENT***

46. The *Carey* formula only applies when a pre-existing impairment combines with the current injury to create total and permanent disability. *Hamilton v. Ted Beamis Logging & Constr.*, 127 Idaho 221, 899 P.2d 434 (1995). Its purpose is to apportion the nonmedical disability factors between the employer and the ISIF. The formula comes from *Carey v. Clearwater County Road Department*, 107 Idaho 109, 118, 686 P.2d 54, 63 (1984), in which the Idaho Supreme Court held:

[T]he appropriate solution to the problem of apportioning the nonmedical

disability factors, in an odd-lot<sup>3</sup> case where the fund is involved, is to prorate the nonmedical portion of disability between the employer and the fund, in proportion to their respective percentages of responsibility for the physical impairment.

*Henderson v. McCain Foods, Inc.*, 142 Idaho 559, 567, 130 P.3d 1097, 1105 (2006).

47. Claimant's pre-existing whole person impairment is 67%. Claimant's impairment for the injury of September 27, 2002, as determined by Dr. Paulos is 10%. Applying the formula, ISIF is liable for 87.01% of Claimant's disability benefits (67/77).

### **CONCLUSIONS OF LAW**

1. Claimant is totally and permanently disabled.
2. ISIF is liable for a portion of Claimant's total disability benefits pursuant to Idaho Code § 72-332.
3. Pursuant to the *Carey* formula, ISIF is liable for 87.01% of Claimant's total disability benefits. As a result ISIF shall be fully responsible for total permanent disability benefits beginning 64.95 (100% - 87.01% x 500) weeks after Claimant's medical stability.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

### **ORDER**

1. Claimant is totally and permanently disabled.
2. ISIF is liable for a portion of Claimant's total disability benefits pursuant to Idaho Code § 72-332.

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<sup>3</sup> "In *Carey*, the Claimant was deemed totally and permanently disabled as an odd-lot worker. Application of *Carey* is not limited to cases in which the claimant's total disability is a result of the application of the odd lot doctrine. At bottom, *Carey* is a method of allocating liability for non-medical factors in total perm cases. Whether a claimant is found totally disabled because of the application of the odd-lot doctrine, or because his or her impairments together with non-medical factors total 100%, has no bearing on the application of the *Carey* formula, so long as the statutory requirements of Idaho Code § 72-332 for ISIF liability are met." *Mills v. J. R. Simplot, Inc.*, 2007 IIC 0903, December 14, 2007.

3. Pursuant to the *Carey* formula, ISIF is liable for 87.01% of Claimant's total disability benefits. As a result ISIF shall be fully responsible for total permanent disability benefits beginning 64.95 (100% - 87.01% x 500) weeks after Claimant's medical stability.

4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this \_3rd\_\_\_\_\_ day of \_\_\_\_\_March\_\_\_\_, 2008.

INDUSTRIAL COMMISSION

\_\_\_\_/s/\_\_\_\_\_  
James F. Kile, Chairman

\_\_\_\_/s/\_\_\_\_\_  
R.D. Maynard, Commissioner

\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on the \_3rd day of March, 2008 a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon:

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\_\_\_\_/s/\_\_\_\_\_